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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CANDICE M.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent,

MERCED COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F046916

(Super. Ct. No. 27047)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Frank Dougherty,
Judge.

Candice M., in pro. per., for Petitioner.

No appearance for Respondent.

Ruben E. Castillo, County Counsel, and James B. Tarhalla, Deputy County
Counsel, for Real Party in Interest.

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* Before Harris, Acting P.J., Buckley, J., and Dawson, J.

Petitioner in pro. per. seeks an extraordinary writ (Cal. Rules of Court, rule 38) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing¹ as to her infant son J. On review, we agree with petitioner and will grant relief.

STATEMENT OF THE CASE AND FACTS

On October 17, 2003, agents from a narcotics task force served a search warrant on a residence where then 17-year-old petitioner and her one-month-old son, J., resided with petitioner's mother. The agents arrested the four adults present, including petitioner's mother, for being under the influence of methamphetamine, possessing methamphetamine, maintaining a residence where drugs were being sold and child endangerment. Petitioner failed a sobriety test and was also arrested for being under the influence of methamphetamine. She was detained briefly and released. Meanwhile, the Merced County Human Services Agency (agency) placed J. in protective custody and filed a dependency petition filed on his behalf.²

An investigation of the family history revealed that petitioner was in the care and custody of her mother who has a long history of substance abuse and domestic violence to which petitioner and J. had been exposed. Petitioner admitted her own struggle with drug use but reported that she was participating in an alcohol and drug treatment program for youths on a self-referral. She relapsed one time just before J.'s birth, causing him to be born with a positive toxicology for amphetamine. She denied being under the influence at the time of her arrest and submitted to a random hair and urine drug test on

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Although the agency also took petitioner's adolescent brother into protective custody and initiated dependency proceedings on his behalf, it did not afford 17-year-old petitioner the same protections.

October 30, 2003, the results of which were negative. The juvenile court detained J., declared him a dependent child of the court and set the dispositional hearing.

In its dispositional report, the agency stated J. could not be safely returned to petitioner's care, noting petitioner was a minor who was dependent upon her own mother to provide a home and safe environment. However, the maternal grandmother had a long history of substance abuse and had exposed her children and even J. to domestic violence. Petitioner was unable to rectify the problems and was dependent on her mother's ability to complete her own service plan with petitioner's younger brother. The agency reported that petitioner and her mother were homeless and living in a motel with friends until petitioner's mother could secure appropriate and safe housing. It also described petitioner as possessing good maternal instincts and although the agency only provided visitation on an every-two-week basis, it described J. as positively attached to petitioner. In addition, petitioner was continuing her education and had tested drug free since J.'s birth.

Notably, however, the agency did not recommend any services to enable petitioner to provide, independent from her own mother, a home and safe environment for J. The agency did recommend that the court offer petitioner reunification services, but the agency offered a plan limited to petitioner completing her alcohol and drug treatment program, identified as "RAFT," and submitting to random drug testing. At the dispositional hearing on January 13, 2004, the court ordered the agency to provide petitioner with family reunification services.

Over the next six months, petitioner completed the RAFT program in March 2004 but relapsed and tested positive for methamphetamine and marijuana in May 2004. In its report to the court, the agency acknowledged the RAFT program did not provide petitioner sufficient skills to prevent relapsing. Petitioner also attended high school through an independent studies program. Meanwhile, she had moved from place to place. Towards the end of the six-month period she was once again living with her

mother, this time in a motel. The caseworker reportedly advised petitioner she needed to find permanent and stable housing and dissociate from people using drugs, including her mother. However, the record is silent regarding any services to aid petitioner in this regard. In late June 2004, petitioner had entered an inpatient drug treatment program offered by Tranquility Village.

At the six-month review hearing on July 13, 2004, the court found petitioner had cooperated with services and there was a substantial probability of reunification within the next six months. It in turn continued services and set a 12-month review hearing for December 6, 2004. Notably, while stable housing was a new objective of the service plan the agency developed for the second six months, there was no service requirement on the agency's part in this regard.

In an interim report, the agency advised the court Tranquility Village discharged petitioner in mid July, for substance abuse. She however reentered inpatient treatment in August, and promised to complete the program. After her successful completion of the program, she planned to obtain a home of her own.

In its 12-month status review dated November 30, 2004, the agency reported that petitioner was pregnant and still in inpatient drug treatment. According to her counselor, she was progressing on schedule and was expected to complete the program in February 2005. The agency noted the court could place J. with petitioner at Tranquility Village. Petitioner was in fact housed in that part of the program for new mothers and their children. Petitioner also consistently tested negative for drugs and modeled good parenting skills in her care of J.

The agency further reported that petitioner's support system was nonexistent. Her only support was her mother who in the meantime had failed to reunify with petitioner's younger brother. The agency also acknowledged that petitioner needed a social support system. Yet, there was no showing that the agency offered petitioner any services in this

regard. Instead, it could only state petitioner did not have any family help and did not have anyone to go to for help.

The agency concluded in its report that petitioner had not demonstrated sufficient improvement in remaining drug-free to reunify with J. Consequently, the agency recommended the court terminate reunification services and set the matter for permanency planning.

The juvenile court conducted the 12-month review hearing on December 6, 2004. Petitioner testified that she was participating in inpatient drug treatment and had been drug-free since she was readmitted in August 2004. She also stated she did not want the court to terminate her parental rights.

After the matter was submitted, the court found petitioner had not adequately addressed her drug addiction nor demonstrated the ability to live a drug-free lifestyle. It added that although petitioner was currently actively participating in her case plan, she had received 12 months of services and had been unable to show enough significant improvement. Accordingly, the court terminated reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Citing to the record's showing of her progress towards reunification, petitioner urges that the court could have placed J. with her in Tranquility Village and continued reunification services. The agency as real party in interest argues the petition should be dismissed as facially deficient because it fails to comport with the requirements of California Rules of Court, rule 38.1 (rule). Notably, the agency does not address the merits of petitioner's claims. Mindful that the rule also directs us to liberally construe a petition in favor of its sufficiency (Rule 38.1(a)(2)), we conclude petitioner raised a cognizable issue warranting a review on the merits.

At the 12-month review hearing, if the court does not return the child to parental custody, it must either continue services to the 18-month review hearing, terminate

reunification services and set a section 366.26 hearing or order the child placed in long-term foster care. (§ 366.21, subd. (g).) An order continuing reunification services for up to 18 months is warranted when the parent has not received reasonable services (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167) or where there is a substantial probability that the child will be returned to parental custody and safely maintained in the home within the extended period of time (§ 366.21, subd. (g)(1)). A substantial probability of return exists when the parent regularly visits the child, makes significant progress in resolving the problem requiring removal of the child, and demonstrates the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection and well-being. (*Ibid.*) We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

In this case, however, substantial evidence does not support the juvenile court's order terminating reunification services. One, petitioner did not receive reasonable reunification services (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414) in that the agency made no effort to help petitioner develop a support system and skills for independent living separate and apart from her own mother. It required her to establish a stable lifestyle but offered her no support to achieve that goal. Thus, it comes as little surprise to this court that despite petitioner's noted efforts to comply with the agency's service plan over the course of a year, she still had not completed it. Second, given the significant progress petitioner did make, her regular visitation with J., and her demonstrated ability to complete case plan objectives as well as the evidence that as of December 2004 she could provide a home for J. at Tranquility Village, we conclude the court erred in not finding a substantial probability of return in another six months.

There can be no doubt, assuming petitioner finished the inpatient phase of drug treatment in February 2005 as scheduled, that petitioner still had skills to attain and a

support system to achieve. However, the agency bears at least some of the blame for that. Regrettably, the record reveals the “system” of dependency protection failed petitioner and in the process J. Having concluded there was insufficient evidence to support a reasonable-services finding in this case and given the substantial probability of return in another six months with the proper services, we conclude the juvenile court erred in terminating reunification services and setting the section 366.26 hearing.

DISPOSITION

The petition for extraordinary writ is granted. Let a writ of extraordinary relief issue directing the juvenile court to vacate its orders terminating services and setting the section 366.26 hearing for April 5, 2005. The juvenile court is further ordered to grant petitioner six additional months of reasonable reunification services consistent with the views expressed in this opinion. This opinion is final forthwith as to this court.